

**SPECIAL EDUCATION RECODIFICATION**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill recodifies Title 53E, Chapter 7, Special Education.

**Highlighted Provisions:**

This bill:

- defines terms;
- repeals outdated provisions related to special education;
- reorganizes, redrafts, and updates existing provisions related to special education;
- and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**53E-3-503**, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and amended by Laws of Utah 2018, Chapter 1

**53E-7-201**, as enacted by Laws of Utah 2018, Chapter 1

**53G-8-305**, as renumbered and amended by Laws of Utah 2018, Chapter 3

**62A-2-108.1**, as last amended by Laws of Utah 2018, Chapter 415

**62A-5a-102**, as last amended by Laws of Utah 2018, Chapter 415

**62A-5a-105**, as last amended by Laws of Utah 2018, Chapter 415

**REPEALS AND REENACTS:**

**53E-7-202**, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and amended by Laws of Utah 2018, Chapter 1

**53E-7-204**, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and amended by Laws of Utah 2018, Chapter 1

33           **53E-7-206**, as renumbered and amended by Laws of Utah 2018, Chapter 1

34           **53E-7-207**, as renumbered and amended by Laws of Utah 2018, Chapter 1

35           **53E-7-208**, as renumbered and amended by Laws of Utah 2018, Chapter 1

36 RENUMBERS AND AMENDS:

37           **53G-6-709**, (Renumbered from 53E-7-205, as renumbered and amended by Laws of  
38           Utah 2018, Chapter 1)

39 REPEALS:

40           **53E-7-301**, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and  
41           amended by Laws of Utah 2018, Chapter 1

42           **53E-7-302**, as renumbered and amended by Laws of Utah 2018, Chapter 1

43           **53E-7-303**, as renumbered and amended by Laws of Utah 2018, Chapter 1

44           **53E-7-304**, as renumbered and amended by Laws of Utah 2018, Chapter 1

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46 *Be it enacted by the Legislature of the state of Utah:*

47           Section 1. Section **53E-3-503** is amended to read:

48           **53E-3-503. Education of individuals in custody of or receiving services from**  
49 **certain state agencies -- Establishment of coordinating council -- Advisory councils.**

50           (1) For purposes of this section, "board" means the State Board of Education.

51           (2) (a) The board is directly responsible for the education of all individuals who are:

52           (i) (A) younger than 21 years old; or

53           ~~[(B) students with disabilities entitled to a free, appropriate public education as~~  
54 ~~described in Section 53E-7-202; and]~~

55           (B) eligible for special education services as described in Chapter 7, Part 2, Special  
56 Education Program; and

57           (ii) (A) receiving services from the Department of Human Services;

58           (B) in the custody of an equivalent agency of a Native American tribe recognized by  
59 the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides  
60 within the state; or

61           (C) being held in a juvenile detention facility.

62           (b) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah

63 Administrative Rulemaking Act, to provide for the distribution of funds for the education of

64 individuals described in Subsection (2)(a).

65 (3) Subsection (2)(a)(ii)(B) does not apply to an individual taken into custody for the  
66 primary purpose of obtaining access to education programs provided for youth in custody.

67 (4) The board shall, where feasible, contract with school districts or other appropriate  
68 agencies to provide educational, administrative, and supportive services, but the board shall  
69 retain responsibility for the programs.

70 (5) The Legislature shall establish and maintain separate education budget categories  
71 for youth in custody or who are under the jurisdiction of the following state agencies:

72 (a) detention centers and the Divisions of Juvenile Justice Services and Child and  
73 Family Services;

74 (b) the Division of Substance Abuse and Mental Health; and

75 (c) the Division of Services for People with Disabilities.

76 (6) (a) The Department of Human Services and the board shall appoint a coordinating  
77 council to plan, coordinate, and recommend budget, policy, and program guidelines for the  
78 education and treatment of persons in the custody of the Division of Juvenile Justice Services  
79 and the Division of Child and Family Services.

80 (b) The Department of Human Services and the board may appoint similar councils for  
81 those in the custody of the Division of Substance Abuse and Mental Health or the Division of  
82 Services for People with Disabilities.

83 (7) A school district contracting to provide services under Subsection (4) shall  
84 establish an advisory council to plan, coordinate, and review education and treatment programs  
85 for individuals held in custody in the district.

86 Section 2. Section **53E-7-201** is amended to read:

87 **53E-7-201. Definitions.**

88 [~~Reserved~~]

89 As used in this part:

90 (1) "Child with a disability" means the same as that term is defined in 34 C.F.R. Sec  
91 300.308.

92 (2) "Due process hearing" means an administrative due process hearing authorized by  
93 20 U.S.C. Sec. 1415.

94 (3) "Individualized education program" or "IEP" means a written statement for an

eligible student that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(4) "LEA special education program" means the implementation of an eligible student's IEP by the eligible student's LEA.

(5) "Local education agency" or "LEA" means:

(a) a school district;

(b) a charter school; or

(c) the Utah Schools for the Deaf and the Blind.

(6) "Special education services" means the specialized instruction and related services, described in an eligible student's IEP, that are necessary to provide a free appropriate public education to the eligible student.

(7) "State board" means the State Board of Education.

(8) "Student who is eligible for special education services" or "eligible student" means a child with a disability who is:

(a) at least 3 years old but younger than 22 years old; or

(b) 22 years old, if the school year in which the child with a disability turned 22 years old has not yet ended.

Section 3. Section **53E-7-202** is repealed and reenacted to read:

**53E-7-202. Free appropriate public education for eligible students.**

An eligible student who has not received a regular high school diploma is entitled to a free appropriate public education.

Section 4. Section **53E-7-204** is repealed and reenacted to read:

**53E-7-204. State Board of Education special education authority and duties -- Rulemaking.**

(1) The State Board of Education shall have general control and supervision over all public educational programs in the state for students who are eligible for special education services.

(2) A program described in Subsection (1) shall comply with state board rule.

(3) In accordance with federal law, state law, and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state board shall make rules to implement this part, including provisions that ensure:

- 126 (a) appropriate and timely identification of a potential eligible student;  
127 (b) the evaluation and classification of an eligible student by qualified personnel;  
128 (c) standards for special education services and supports;  
129 (d) availability of LEA special education programs;  
130 (e) delivery of special education service responsibilities;  
131 (f) certification and qualification for the instructional staff of eligible students; and  
132 (g) special education services for eligible students who are dual enrollment students  
133 attending public school on a part-time basis as described in Section 53G-6-702.

134 (4) In accordance with federal law, state law, and Title 63G, Chapter 3, Utah  
135 Administrative Rulemaking Act, the state board may make rules to otherwise administer the  
136 state board's authority described in Subsection (1).

137 Section 5. Section **53E-7-206** is repealed and reenacted to read:

138 **53E-7-206. Special education funding.**

139 In accordance with Title 53F, Chapter 2, State Funding -- Minimum School Program,  
140 state board rule, and other applicable law, the state board shall administer the payment of  
141 restricted state and federal funds to an LEA to provide special education services to an eligible  
142 student.

143 Section 6. Section **53E-7-207** is repealed and reenacted to read:

144 **53E-7-207. Local education agency special education duty and authority.**

145 (1) An LEA shall, at no cost to the eligible student, provide a full continuum of special  
146 education services and placements to an eligible student enrolled at the LEA.

147 (2) (a) Upon request of the Division of Child and Family Services, an LEA shall  
148 provide an initial special education evaluation to an individual who enters the custody of the  
149 Division of Child and Family Services, if the Division of Child and Family Services suspects  
150 the individual may be an eligible student.

151 (b) (i) Except as provided in Subsection (2)(b)(ii), the LEA shall conduct an evaluation  
152 described in Subsection (2)(a) within 30 days after the day on which the Division of Child and  
153 Family Services makes the request.

154 (ii) An LEA may refuse to conduct an evaluation described in Subsection (2)(a) if the  
155 LEA reviews the relevant data regarding the individual and, within 10 days after the day on  
156 which the LEA received the request described in Subsection (2)(a), gives the Division of Child

157 and Family Services written prior notice of refusal to evaluate.

158 (3) (a) In accordance with Subsection (3)(b), an LEA may provide education or training  
159 for an individual with a disability who is:

160 (i) younger than 3 years old; or

161 (ii) at least 22 years old and not an eligible student.

162 (b) (i) Except as provided in Subsection (3)(b)(ii), an LEA may not use funding  
163 described in Title 53F, Chapter 2, State Funding -- Minimum School Program, to pay for the  
164 cost of education or training described in Subsection (3)(a).

165 (ii) An LEA may use adult education program funding described in Section 53F-2-401,  
166 in accordance with the requirements described in Section 53F-2-401, to pay for the cost of the  
167 education or training described in Subsection (3)(a).

168 (c) To pay for the cost of education or training described in Subsection (3)(a), an LEA  
169 may use fees, contributions, or other funds received by the LEA if the purpose of the fees,  
170 contributions, or other funds is to provide the education or training.

171 Section 7. Section **53E-7-208** is repealed and reenacted to read:

172 **53E-7-208. Special education dispute resolution -- Rulemaking -- Due process**  
173 **hearing -- Right to appeal.**

174 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
175 this section, the state board shall make rules that:

176 (a) allow for a prompt, fair, and final resolution of a dispute that arises over the  
177 provision of special education services to an eligible student;

178 (b) establish and maintain procedural safeguards that meet the requirements of 20  
179 U.S.C. Sec. 1415; and

180 (c) establish timelines that provide adequate time to address and resolve a dispute  
181 described in Subsection (1)(a) without unnecessarily disrupting or delaying an eligible student's  
182 free appropriate public education.

183 (2) A party to a dispute described in Subsection (1)(a), including an LEA, shall make a  
184 diligent and good faith effort to resolve the dispute informally at the LEA level before seeking  
185 a due process hearing under state board rule.

186 (3) (a) If a dispute is not resolved informally as described in Subsection (2), a party to  
187 the dispute may request a due process hearing in accordance with state board rule.

(b) Upon request of a party to a dispute described in Subsection (2), the state board shall, in accordance with state board rule and 20 U.S.C. Sec. 1415:

(i) conduct a due process hearing; and

(ii) issue a decision on the due process hearing.

(4) (a) A party to a due process hearing may appeal the decision resulting from the due process hearing by filing a civil action with a court described in 20 U.S.C. Sec. 1415(i), if the party files the action within 30 days after the day on which the due process hearing decision was issued.

(b) If parties to a due process hearing fail to reach agreement on the payment of attorney fees for the due process hearing, a party may seek to recover attorney fees in accordance with 20 U.S.C. Sec. 1415(i) by filing a court action within 30 days after the day on which the due process hearing decision was issued.

Section 8. Section **53G-6-709**, which is renumbered from Section 53E-7-205 is renumbered and amended to read:

**[53E-7-205].            53G-6-709. Participation of students with a disability in extracurricular activities.**

(1) A student with a disability may not be denied the opportunity of participating in a public school ~~[programs]~~ program or extracurricular ~~[activities]~~ activity solely because of the student's age or disability, unless the participation threatens the health or safety of the student.

(2) The school district or charter school, in cooperation with the Utah Department of Health shall establish criteria used to determine the health and safety factor.

(3) Subsection (1) applies to a student who:

(a) has not graduated from high school with a regular diploma; and

(b) is under the age of ~~[20]~~ 22, if participation is recommended by the student's individualized education program team.

Section 9. Section **53G-8-305** is amended to read:

**53G-8-305. Exception.**

Behavior reduction intervention which is in compliance with Section 76-2-401 and with state and local rules adopted under Section ~~[53E-7-202]~~ 53E-7-204 is excepted from this part.

Section 10. Section **62A-2-108.1** is amended to read:

**62A-2-108.1. Coordination of human services and educational services --**

219 **Licensing of programs -- Procedures.**

220 (1) For purposes of this section:

221 (a) "accredited private school" means a private school that is accredited by an  
222 accrediting entity recognized by the Utah State Board of Education; and

223 (b) "education entitled children" means children:

224 (i) subject to compulsory education under Section 53G-6-202;

225 (ii) subject to the school attendance requirements of Section 53G-6-203; or

226 [~~(iii) entitled to educational services under Section 53E-7-202.~~]

227 (iii) who are eligible for special education services as described in Title 53E, Chapter  
228 7, Part 2, Special Education Program.

229 (2) Subject to Subsection (8) or (9), a human services program may not be licensed to  
230 serve education entitled children unless the human services program presents an educational  
231 service plan that includes evidence:

232 (a) satisfactory to:

233 (i) the office; and

234 (ii) (A) the local school board of the school district in which the human services  
235 program will be operated; or

236 (B) the school district superintendent of the school district in which the human services  
237 program will be operated; and

238 (b) that children served by the human services program shall receive appropriate  
239 educational services satisfying the requirements of applicable law.

240 (3) Subject to Subsection (8) or (9), if a human services program serves any education  
241 entitled children whose custodial parents or legal guardians reside outside the state, then the  
242 program shall also provide an educational funding plan that includes evidence:

243 (a) satisfactory to:

244 (i) the office; and

245 (ii) (A) the local school board of the school district in which the human services  
246 program will be operated; or

247 (B) the school district superintendent of the school district in which the human services  
248 program will be operated; and

249 (b) that all costs for educational services to be provided to the education entitled



children, including tuition, and school fees approved by the local school board, shall be borne by the human services program.

(4) Subject to Subsection (8) or (9), and in accordance with Subsection (2), the human services program shall obtain and provide the office with a letter:

(a) from the entity referred to in Subsection (2)(a)(ii):

(i) approving the educational service plan referred to in Subsection (2); or

(ii) (A) disapproving the educational service plan referred to in Subsection (2); and

(B) listing the specific requirements the human services program must meet before approval is granted; and

(b) from the entity referred to in Subsection (3)(a)(ii):

(i) approving the educational funding plan, referred to in Subsection (3); or

(ii) (A) disapproving the educational funding plan, referred to in Subsection (3); and

(B) listing the specific requirements the human services program must meet before approval is granted.

(5) Subject to Subsection (8), failure of a local school board or school district superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local school board or school district superintendent if the human services program provides to the office:

(a) proof that:

(i) the human services program submitted the proposed plan to the local school board or school district superintendent; and

(ii) more than 45 days have passed from the day on which the plan was submitted; and

(b) an affidavit, on a form produced by the office, stating:

(i) the date that the human services program submitted the proposed plan to the local school board or school district superintendent;

(ii) that more than 45 days have passed from the day on which the plan was submitted;

and

(iii) that the local school board or school district superintendent described in Subsection (5)(b)(i) failed to respond to the proposed plan within 45 days from the day on which the plan was submitted.

(6) If a licensee that is licensed to serve an education entitled child fails to comply with

its approved educational service plan or educational funding plan, then:

(a) the office shall give the licensee notice of intent to revoke the licensee's license; and

(b) if the licensee continues its noncompliance for more than 30 days after receipt of the notice described in Subsection (6)(a), the office shall revoke the licensee's license.

(7) If an education entitled child whose custodial parent or legal guardian resides within the state is provided with educational services by a school district other than the school district in which the custodial parent or legal guardian resides, then the funding provisions of Section 53G-6-405 apply.

(8) A human services program that is an accredited private school:

(a) for purposes of Subsection (2):

(i) is only required to submit proof to the office that the accreditation of the private school is current; and

(ii) is not required to submit an educational service plan for approval by an entity described in Subsection (2)(a)(ii);

(b) for purposes of Subsection (3):

(i) is only required to submit proof to the office that all costs for educational services provided to education entitled children will be borne by the human services program; and

(ii) is not required to submit an educational funding plan for approval by an entity described in Subsection (3)(a)(ii); and

(c) is not required to comply with Subsections (4) and (5).

(9) Except for Subsection (7), the provisions of this section do not apply to a human services program that is:

(a) a foster home; and

(b) required to be licensed by the office.

Section 11. Section **62A-5a-102** is amended to read:

**62A-5a-102. Definitions.**

As used in this chapter:

(1) "Council" means the Coordinating Council for Persons with Disabilities.

(2) "State agencies" means:

(a) the Division of Services for People with Disabilities and the Division of Substance Abuse and Mental Health, within the Department of Human Services;

(b) the Division of Health Care Financing within the Department of Health;

(c) family health services programs established under Title 26, Chapter 10, Family

Health Services, operated by the Department of Health;

(d) the Utah State Office of Rehabilitation created in Section 35A-1-202; and

(e) special education programs operated by the State Board of Education [~~and local school districts~~] or an LEA under Title 53E, Chapter 7, Part 2, Special Education Program.

Section 12. Section **62A-5a-105** is amended to read:

**62A-5a-105. Coordination of services for school-age children.**

(1) Within appropriations authorized by the Legislature, the state director of special education, the director of the Utah State Office of Rehabilitation created in Section 35A-1-202, the executive director of the Department of Human Services, and the family health services director within the Department of Health, or their designees, and the affected [~~local school district~~] LEA, as defined in Section 53E-7-201, shall cooperatively develop a single coordinated education program, treatment services, and individual and family supports for students entitled to a free appropriate education under Title 53E, Chapter 7, Part 2, Special Education Program, who also require services from the Department of Human Services, the Department of Health, or the Utah State Office of Rehabilitation.

(2) Distribution of costs for services and supports described in Subsection (1) shall be determined through a process established by the State Board of Education, the Department of Human Services, and the Department of Health.

Section 13. **Repealer.**

This bill repeals:

Section **53E-7-301, Definitions.**

Section **53E-7-302, Braille skills assessment -- Development of individualized education program.**

Section **53E-7-303, Instruction in reading and writing of Braille.**

Section **53E-7-304, Braille versions of textbooks.**